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**UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff and Counter-Defendant,

v.

FEATURE FILMS FOR FAMILIES, INC.,

CORPORATIONS FOR CHARACTER, L.C.,

FAMILY FILMS OF UTAH, INC., and

FORREST SANDUSKY BAKER III, individually
and as owner and principal officer of
FEATURE FILMS FOR FAMILIES,
INC., CORPORATIONS FOR
CHARACTER, L.C., and FAMILY
FILMS OF UTAH, INC.,

Defendants and Counter-Plaintiffs.

Case 2:11-cv-00419-RJS-DBP

**UNITED STATES OF AMERICA'S
MOTION TO STRIKE
DEFENDANTS' MOTIONS FOR
PARTIAL SUMMARY
JUDGMENT AND EXPEDITE
REVIEW**

The United States, by and through counsel, respectfully requests that the Court strike without prejudice Defendants' Motions for Partial Summary Judgment, Dkt. Nos. 38, 39, 41, for noncompliance with this District's Local Rules. Further, the United States respectfully requests an expedited review and hearing on this Motion.

PROCEDURAL POSTURE

Defendants in this action are telemarketers who make calls to consumers nationwide to induce sales of movies and solicit charitable contributions. The Complaint in this case alleges that Defendants have committed numerous violations of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45(a), and the FTC's Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, as amended. Specifically, the United States alleges that Defendants (1) made deceptive representations and false statements, (2) violated the National Do Not Call Registry, (3) ignored entity-specific do not call requests, (4) failed to transmit information to caller identification services, (5) failed to make required oral disclosures, and (6) abandoned calls.

On July 6, 2012, Defendants filed a Motion for Partial Summary Judgment in the Northern District of Florida seeking to dismiss Counts I and II of the Complaint as they related to Defendants' fundraising campaigns on behalf of various Fraternal Orders of Police and the Firefighters Charitable Foundation. Dkt. No. 38. Additional Motions for Partial Summary Judgment were filed on July 12, 2012, and July 13, 2012, respectively. Dkt. Nos. 39, 41.

Following a stay of a dispositive briefing schedule and subsequent transfer of this action from the Northern District of Florida to this District, the United States has made efforts to secure a schedule for orderly resolution of the pending discovery and briefing of dispositive motions. On September 18, 2012, the United States informed Defendants that their motions for partial

summary judgment were not in compliance with the District of Utah's Local Rules as filed because they do not "begin with a section that contains a concise statement of material facts as to which movant contends no genuine issue exists." Ex. 1, at 2 (Sept. 18, 2012 Letter from Baeza to McInnis); *see also* DUCivR 56-1(b).

On November 14, a scheduling conference was held with Magistrate Judge Furse. There, it was ordered that responses to Defendants' Motions were due by December 14. Dkt. No. 69. Magistrate Judge Furse also gave the United States the option of moving to strike Defendants' Motions for noncompliance with this District's Local Rules. This Motion followed.

ARGUMENT

I. DEFENDANTS' MOTIONS FOR PARTIAL SUMMARY JUDGMENT DO NOT COMPLY WITH THE LOCAL RULES FOR THE DISTRICT OF UTAH

A memorandum in support of a motion for summary judgment "must begin with a section that contains a concise statement of material facts as to which movant contends no genuine issue exists." DUCivR 56-1(b). Memoranda in opposition to a motion for summary judgment also must begin with a concise statement of material facts "as to which [facts] the party contends a genuine issue exists." *Id.* at 56(c). These facts must be referred to with particularity; failure to do so may deem the fact admitted unless specifically controverted by the opposing party. *Id.*

Defendants do not dispute that their previously-filed motions for partial summary judgment fail to comply with this District's Local Rules. The harm in not complying with the Local Rules is evident. The rule requiring a concise statement of facts forces the moving party to be up front in identifying the precise facts upon which it bases its request for summary judgment, so that the responding party does not have a moving target or scavenger hunt on its hands when

writing a response. These concerns are multiplied where, as here, the Defendants have filed several motions for partial summary judgment, each containing facts spread throughout their briefs.

In the scheduling conference with Magistrate Judge Furse, Defendants argued that opposing statements of fact in dispositive briefing are not fruitful because the nonmoving party can simply dispute every material fact asserted. This is only the case if the opposing party possesses specific evidence with which to dispute each fact. The Local Rules for the District of Utah provide that the party opposing summary judgment must “refer with particularity to those portions of the record on which the opposing party relies” DUCivR 56-1(c).

A lack of a concise statement of the material facts will result in wasted time by the parties and the Court, as everyone determines which, if any, facts contained in multiple briefs are disputed. The Court should therefore strike Defendants’ motions without prejudice, and provide for the orderly resolution of the Defendant’s motions. In the alternative, the United States requests that the Court order that Defendants submit a separately-filed, concise statement of facts as described in the local rule, as to each of its motions for partial summary judgment and provide time for the United States to respond.

II. THERE IS GOOD CAUSE FOR EXPEDITED REVIEW AND ANY HEARING OF THIS ISSUE

The current schedule for dispositive briefing requires oppositions to Defendants’ motions for partial summary judgment on or before December 14, 2012. Due to the short time frame between the Court’s scheduling order and the response date for oppositions to these motions, there is a reasonable likelihood that this Motion would be fully briefed and decided *after* the

deadline for oppositions to be filed. Accordingly, the United States respectfully requests that the Court strike Defendants' motions as soon as possible to eliminate the need for a response to motions that are out of compliance with District of Utah Local Rules.

CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court expedite review of this motion and strike Defendants' Motions for Partial Summary Judgment, Dkt. Nos. 38, 39, 41.

Dated: November 26, 2012

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Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Daniel M. Baeza, certify that on November 26, 2012 I served a true copy of the United States' Motion to Strike Defendants' Motions for Partial Summary Judgment and Expedite Review on all counsel of record via ECF.

s/ Daniel M. Baeza
DANIEL M. BAEZA